

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.153/2004**

% **2nd March, 2012**

SH. VIRENDER KUMAR JAIN Appellant

Through: None.

versus

M/S. ALUMATE (INDIA) PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 2.2.2012.

No one appears for the parties although the matter is effective item No.10 on the Regular Board. It is 2.40 P.M.

2. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment dated 22.11.2003 of the trial Court dismissing the suit filed by the appellant/plaintiff under Order 37 CPC for recovery of ₹ 3,49,000/- alongwith interest. The suit was dismissed as it was held to be barred by limitation.

3. The facts of the case are that the appellant/plaintiff gave a

friendly loan to the defendant vide cheque No.172560 dated 22.4.1998 drawn on Punjab National Bank for a sum of ₹ 1 lakh and also by another cheque drawn on the same bank numbered 177746 dated 18.10.1998 for ₹ 1,50,000/-. The defendant executed promissory notes and receipts dated 22.4.1998 and 19.10.1998 showing the receipt of the loan. The respondent/defendant is stated to have continued to pay interest till 10.3.2000 and since thereafter dues were not paid notice dated 14.12.2001 was issued to the defendant, which having proved futile, the subject suit was filed on 8.2.2002.

4. The trial Court has held that the respondent/defendant has no substantial defence to raise in view of the promissory notes and receipts dated 22.4.1998 and 19.10.1998. The trial Court however dismissed the suit as barred by limitation by making the following observations:-

“10. Now the question is about the right of plaintiff to judgment. During arguments on application for leave to defend. Ld. Counsel for respondent submitted that the present suit is barred by law of limitation. An application in this regard under order 7 rule 11 (d) CPC has also been moved for defendant. Reply to the same has been filed for plaintiff submitting that as per section 19 of the Limitation Act. the fresh period of limitation shall be computed from the time the payment is made. As such in the present case the fresh period of limitation has to be computed from 10.3.2000 when he filed the application for leave to defend.

11. During arguments also on application for leave to defend. Ld. Counsel for plaintiff has relied section 19 of Limitation Act to show that the suit is within limitation. Section 19 of Limitation Act, 1963 is reproduced below:

“Where payment on account of a debt or of interest on a legacy

is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf a fresh period of limitation shall be computed from the time when the payment was made.

Provided that save in the case of payment of interest made before the 1st day of January 1929 an acknowledgment of a payment appears in the handwriting of or in a writing signed by the person making the payment.”

12. In the present case the case of the plaintiff is that the defendant continued to pay interest till 10.3.2000 and fresh period of limitation starts from 11.3.2000. It is worth noting that there is no case of plaintiff that an acknowledgment of a payment appears in the handwriting of or in a writing signed by the person making the payment. In the absence of satisfaction of the condition of proviso to section 19 Limitation Act 1963, fresh period of limitation shall not be computed from the time when the payment was made. The suit is barred by law of limitation if Section 19 Limitation Act is not applicable. The present suit has been filed on 8.2.2002. Receipts dated 22.4.98 and 18.10.2002 show that cheque no. 172580 and 077746 dated 22.4.98 and 18.10.98 have been paid on 22.4.98 and 18.10.98 respectively. Under article 20 to schedule of Limitation Act, 1963, the period of limitation in a case when lender has given the cheque for money in a case when lender has given the cheque for money is 3 years from the date when the cheque is paid. In the present case this period of 3 years expires much before 8.2.2002.

13. In view of the above discussion, the present suit fails and is dismissed being barred by law of limitation. File be consigned to Record Room.”

5. In my opinion, the suit of the appellant/plaintiff cannot be said to be barred by limitation inasmuch as the averments in the plaint show that the loan was given without fixing any date of repayment. Once that is so, the loan would be a loan which would be repayable on demand. The demand in this case is alleged to have been made upon the respondent/defendant for the first time by the notice dated 14.12.2001. The period of limitation therefore will be three years from 14.12.2001, and

therefore the suit which was filed on 8.2.2002 would be within limitation. Suit for recovery of loan without a fixed period or a date of repayment is a suit governed by Article 113 of the Limitation Act, 1963 as per which the suit has to be filed within three years of arising of the cause of action. The cause of action in this case will arise on sending of the legal notice dated 14.12.2001. I therefore hold that the suit was not barred by limitation.

6. In view of the above, appeal is accepted. Impugned judgment is set aside. Suit of the appellant/plaintiff is decreed for a sum of ₹ 3,49,000/- alongwith interest @ 9% per annum simple from the date of filing of the suit till realization. Appellant is also entitled to costs of this appeal. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MARCH 02, 2012

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